

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1832 of 1999

in

SPECIAL CIVIL APPLICATION No 7611 of 1998

with

LETTERS PATENT APPEAL NO. 1833 OF 1999

IN

SPECIAL CIVIL APPLICATION NO. 6325 OF 1994

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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P K PATEL

Versus

A R KSHATRIYA

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Appearance:

MR SV RAJU for Appellant

MR MUKUL SINHA for Respondent No. 1

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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE D.P.BUCH  
Date of decision: 27/12/1999

ORAL JUDGEMENT

Per Thakker, Actg. C.J.

Both these appeals are filed against a common judgment and order passed in SCAs Nos. 7611 of 1998 and 6325 of 1994 by the learned Single Judge on October 27, 1999.

Respondents Nos. 1 and 2 of LPA No. 1832 filed SCA No. 7611 of 1998 inter alia praying for quashing and setting aside the gradation list dated February 3, 1994 and also for a direction for consideration of their cases for promotion to the post of Assistant Conservators of Forest from the date of passing departmental examination, i.e. June 1990 on the basis of the gradation list prepared under Rule 22 of the Rangers (Subordinate Forest Service) (Recruitment and Examination) Rules, 1974 as amended from time to time (hereinafter referred to as "the Rules") and to decide their seniority above all other Range Forest Officers who were junior to them.

Similarly, LPA No. 1833 of 1999 is filed against the decision in SCA No.6325 of 1994 filed by respondents Nos. 1 and 2 inter alia praying for fixation of the seniority of the petitioners and other similarly situated persons in the cadre of range forest officers in accordance with the Rules on the basis of their appointment treating them as senior to other Range Forest Officers who were junior to the petitioners.

Learned Single Judge by a common judgment and order, dated October 27, 1999, allowed the petitions and in para 31, following directions were issued:

"x x x x

Special Civil Applications Nos. 6325/94 and  
Special Civil Application No. 7611/98 are partly  
allowed to the following extent:

A. It is declared that the respondent  
authorities acted illegally in operating the  
seniority list dated 3.2.1994 reflecting the  
position of the range forest officers as on  
1.1.1991 for the purpose of granting promotions

to the cadre of Assistant Conservators of Forest after 6.3.1993 and that promotions given by the respondent authorities from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forest from 6.3.1993 onwards were not in accordance with the Gujarat Forests Departmental (Forest Officers Examination) Rules, 1972 as amended by the Amendment Rule contained in the Government notification dated 6.3.1993.

(B) It is directed that-

(1) the respondent authorities shall prepare a fresh seniority list of Range Forest Officers reflecting their seniority as on 6.3.1993 on the basis of the aforesaid departmental examination rules of 1972 as amended by the Government notification dated 6.3.1993. Such seniority list shall cover all the employees holding the posts of Range Forest Officers (previously designated as Rangers) as on 6.3.1993.

(2) Thereafter, with effect from 6.3.1993, the respondent authorities shall readjust the promotions to the cadre of Assistant Conservators of Forests on the basis of such fresh seniority list of Range Forest Officers. However, the officers who were actually promoted from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forests between 6.3.1993 (the date of notification amending the proviso to Rule 7) and 12.10.1998 (the date on which for the first time this court made the promotions to the cadre of Assistant Conservators of Forests subject to the result of SCA No.7611/98) shall not be reverted but for the purpose of determining seniority in the cadre of Assistant Conservators of Forests, their promotions shall be adjusted as regular promotions as and when they become due for promotion to the cadre of Assistant Conservators of Forests on the basis of the fresh seniority list to be prepared by the respondent authorities as per the aforesaid direction.

(3) Henceforth the respondent authorities shall give promotions from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forests on the basis of the fresh seniority list to be prepared by the respondent authorities as per the above directions.

Rule is accordingly made absolute to the aforesaid extent in SCA Nos. 6325 of 1994 and in 7611 of 1998 with no order as to costs."

Being aggrieved by the above judgment and order, the present appeals have been filed.

We have heard, at considerable length, Mr. S.V.Raju for the appellants and Mr. Mukul Sinha for the caveators in LPA No. 1832 of 1999.

Mr. Raju contended that the learned Single Judge has committed an error of law and of jurisdiction in allowing the petitions and in granting seniority to the petitioners over the respondents. He also contended that a right can be said to have accrued in favour of the present appellants which could not have been interfered with by the Rule Making Authority and the Rule as amended was unconstitutional and violative of Articles 14,16 and 19 of the Constitution of India.

He further submitted that the learned Single Judge was not right in observing that only chance of promotion was affected. In fact, the impugned action adversely affected their right to be considered for promotion to the post of ACF from the post of RFO. Such right can be said to be a vested right which could not have been interfered with. In the submission of Mr. Raju, the learned Single Judge has not considered relevant decisions of the Apex Court on the point in their proper perspective and allowed the petitions. Finally, he submitted that during the pendency of petitions, present appellants and other persons were promoted and even if the learned Single Judge was satisfied that promotion was not strictly in accordance with law, appropriate direction ought to have been issued protecting their promotion so that they may not have to face reversion.

Mr. Mukul Sinha, who appeared before the learned Single Judge and who appears on caveat, on the other hand, supported the judgment and order passed by the learned Single Judge. He submitted that the learned Single Judge, after considering the facts and circumstances of the case, issued directions in accordance with law and in consonance with the law laid down by the Supreme Court. The order, hence, does not require interference.

Having heard the learned counsel for the parties, we are fully satisfied that the order passed by the learned

Single Judge does not require any interference.

It is settled law, as per the decision of the Constitution Bench of the Supreme Court in State of Jammu and Kashmir vs. Triloki Nath and others, AIR 1974 SC 1 that when rules for promotion are made applicable to all employees uniformly, they operate prospectively. They govern future cases and though they apply for promotion of those who are already in service, they cannot be said to be retrospective in nature as they apply to future cases with prospective effect.

In the instant case, the rule which was in operation in 1972 provided that if a candidate does not clear the examination within specified chances, he would lose his seniority. The said rule was subsequently amended and the amendment provided that irrespective of chances, as and when the candidate will clear the examination, he would retain his original seniority. It is no doubt true that before the rule was actually amended, under the old rule which operated, several promotions were given and those employees who were placed above the employees who had not cleared the examination within the specified chances, were actually promoted. Had the rule enacted that even those persons who were actually promoted would also be reverted to the lower posts, it could be successfully contended that such operation of rule would be retrospective in nature which adversely affected those employees who were actually promoted and thus, it would be violative of Articles 14 and 16 of the Constitution of India. It could be contended that it would be unreasonable and not be in consonance with Article 19 of the Constitution. But that is not the position. In the case on hand, all those persons who were actually promoted prior to amendment of the rule, have not been disturbed. The rule, however, undoubtedly provides that those employees who were not promoted till the present amended rule came into effect on March 6, 1993, would not be promoted on the basis of accelerated seniority which they would have got but for amendment of the rule. The question before the learned Single Judge was as to whether such rule can be said to be retrospective in operation? The learned Single Judge, after considering various decisions on the point, held and in our opinion rightly, that it cannot be said to be retrospective but only prospective. The learned Single Judge considered the decisions cited by the learned counsel for the present appellants also and in our opinion, he has rightly distinguished those decisions and held that such rule cannot be said to be invalid or violative of Articles 14 and 16 of the Constitution of India and such

rule can be said to be legal, valid and in accordance with law.

We are in agreement with the reasons recorded and conclusions reached by the learned Single Judge. We see no infirmity in the said order. We may say that we are expressing opinion only with regard to present two appeals i.e.orders passed in SCAs Nos. 7611 of 1998 and 6325 of 1994. Since the orders passed by the learned Single Judge are according to law, the appeals are liable to be dismissed.

Both the LPAs are accordingly dismissed. No order as to costs. No orders on civil applications.

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